EXHIBIT 3

Transcript of January 21, 2025 Hearing in *In re Big Lots, Inc., et al.*, Case No. 24-11967 (JKS) (Bankr. D. Del.), filed as Exhibit B to *Burlington Stores, Inc.'s Omnibus Reply to Objections to Burlington's Assignment and Assumption of Myrtle Beach, SC, Washington, UT, Bellevue, NE, Flagstaff, AZ, and Fayetteville, AR Leases*

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	Chapter 11 Case No. 24-11967 (JKS)
BIG LOTS, INC., *et al.*,	(Jointly Administered)
Debtors.	Courtroom No. 6 824 North Market Street Wilmington, Delaware 19801
	Tuesday, January 21, 2025 11:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE J. KATE STICKLES
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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(Proceedings commence at 1:01 p.m.)

THE COURT: Good afternoon, everyone. Please be seated.

This is Judge Stickles. We're on the record in Big Lots, Case No. 24-11967.

Good afternoon.

MR. SHPEEN: Good afternoon, Your Honor. Quickly, I just wanted to do a mic check to make sure everybody on Zoom can hear us at the podium.

So, again, good afternoon, Your Honor. For the record Adam Shpeen of Davis Polk on behalf of the debtors and debtors-in-possession. I am joined today by my colleagues, Brian Resnick, Stephen Piraino, and others from the Davis Polk law firm as well our co-counsel from Morris Nichols.

Your Honor, we filed an agenda last week on January 16th for today's hearing at Docket No. 1739. We filed an amended agenda the following day on January 17th at Docket No. 1776, a further amended agenda last night at Docket No. 1784, and a yet further amended agenda filed about 45 minutes ago at Docket No. 1798.

The good news is that the reason we've been filing so many amended agendas, as my colleague, Mr. Piraino, will discuss, is that many of the items that were originally scheduled to be heard today have either been consensually resolved or we have agreement to adjourn the matter until our

next omnibus hearing which is currently scheduled for February 26th.

Your Honor, before we get into the specific agenda items we thought it might be helpful to give Your Honor and other parties in interest a brief status update since the sale concluded about two weeks ago. So, Your Honor, the good news is that the GRP sale transaction was consummated on schedule. It closed on Friday, January 3rd, the day after Your Honor entered the sale order. We filed a notice of sale closing on January 6th at Docket No. 1588.

Your Honor may have seen that five notices of appeal were filed last week on January 16th, which was the final day of the 14-day appeal period, with respect to the GRP sale order and the accompanying orders shortening notice. I won't discuss in any detail today except to say that the debtors believe that these appeals are meritless and we'll respond in due course. Since the sale to GRP closed, we have been -- we, the debtors, have been primarily focused on a few critical work streams.

First, with respect to the transfer of assets to GBRP and other designated buyers in the winddown of our operations, the debtors and GBRP have been performing under the terms of the sale agreement. The debtors have been receiving payments according to the budget schedule that was worked out as part of the APA and we have been working with

GBRP in transferring designated assets in accordance with the asset purchase agreement. So, that process is proceeding well and at pace.

Second, just to preview for Your Honor as a coming attraction, Your Honor may recall that one of the main excluded assets from the GBRP sale was the debtors corporate headquarters where the debtors will retain any proceeds of the sale of the headquarters in excess of $10 million. The debtors have been in advance discussions with a buyer and have been trading drafts of the sale agreement. We may be before Your Honor very soon requesting approval to proceed with the sale of that asset.

Third, the debtors filed their exclusivity period extension motion with respect to a plan and disclosure statement on January 6th at Docket No. 1590. The debtors were pleased that no parties objected to the requested relief and that this Court enter the exclusivity extension order prior to this hearing at Docket No. 1755.

Zooming out, we, the debtors, are in close dialogue with the committee regarding how best to resolve these cases. That is front of mind and we intend to do so to resolve so these cases in a manner that is most efficient, whether that's through a plan, a conversion, or dismissal. So, no decision has been made yet. We are actively considering all options but the extension of our exclusive period to file a

plan and disclosure statement is certainly helpful with respect to that process.

Fourth and finally, one agenda item that we would like to get out of the way at the outset has to do with -- is the two motions filed by Nexus that was scheduled to be heard today. I am pleased to announce that as reflected on the agenda, Nexus has agreed to adjourn both motions to a later date because the debtors and the committee have reached a settlement in principle to resolve our and the committee's objections with respect to those motions.

We, the committee, Nexus, are working to document this settlement as we speak via stipulation, which we're told Nexus aims to file under certification of counsel in very short order following this hearing. So, we wanted to, you know, cross that off of the agenda for today. And I don't know whether counsel for Nexus is on the line, if they wanted to say anything, so I will pause, but we can move on from that agenda item.

So, with that, Your Honor, unless Your Honor has any questions regarding the update, I will turn the podium over to Mr. Piraino to walk through the specific agenda items.

THE COURT: Okay.

MR. PIRAINO: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. PIRAINO: Stephen Piraino, Davis Polk & Wardwell on behalf of the debtors.

Your Honor, just before going into the substance I just wanted to give a quick roadmap of how we would like to proceed today. First, there is a stipulation in progress with Ashley Furniture to resolve their lift stay that my colleague, Mr. Winiarski, will go through very briefly just to give the Court an update on that. We would then like to go through our 365(d)(4) extension motion, address the various administrative expense claim motions that were filed and then end with the various lease sale matters as set forth in the agenda.

THE COURT: Are the parties in agreement to that?

MR. PIRAINO: Okay, thank you, Your Honor. With that I will just cede the podium quickly to Mr. Winiarski.

MR. WINIARSKI: Good afternoon, Your Honor. Kevin Winiarski, Davis Polk, on behalf of the debtors.

I rise now just to briefly discuss the Ahsley Furniture lift stay motion, which Ashley filed at Docket No. 1603. As Your Honor may know from Ashley's papers, the motion sought to lift the automatic stay so that Ashley could liquidate certain furniture inventory that had previously been manufactured and designated for sale to the debtors pursuant to the terms of a custom supply and manufacturing agreement between Big Lots and Ashley.

Your Honor, I am pleased to report that as we previewed in the amended agenda, the debtors, Ahsley, and GBRP have reached a business deal in principle that would allow for the listing of the stay subject to certain terms and conditions on the resale of the afore mentioned furniture inventory. The parties are currently working to document these terms and a revised form of order which we will expect will be filed under COC by Ashley shortly after this hearing.

So, as we noted in the amended agenda, Ashley's motion is not going forward today and we thank both Ashley and GBRP's counsel for working constructively over the last week to resolve the matter. Unless Your Honor has any questions or Ashley's counsel, Mr. Schwaberg (phonetic), I am not sure if he is on the line, has anything to add I will turn the podium back over to Mr. Piraino.

Thank you.

THE COURT: Okay, does anybody want to be heard with respect to Ashley?

(No verbal response)

THE COURT: Okay, I hear no one.

MR. PIRAINO: Your Honor, again for the record, Stephen Piraino, Davis Polk & Wardwell.

Your Honor, I now would like to turn to Docket No. 1351 which is the debtors motion for an extension of the 365(d)(4) deadline. The debtors initial 120 day period to

assume or reject their unexpired leases expired on January 7th, 2025 and this Court entered a bridge order at docket No. 1551 extending the deadline through and including today. The debtors are seeking an extension of the deadline through and including April 7th, 2025 which would be the full 210-day period permitted by the bankruptcy code.

As of today, the debtors have over 850 leases and extension of the 365(d)(4) deadline is a critical component to GBRP getting the benefit of its bargain on the designation rights it purchased as part of the asset purchase agreement approved by this Court. The GBRP sale order at Docket No. 1556 confirms this. There is a finding in Paragraph (u) that states, and I quote, "The designation rights are an integral part of the APA and the sale."

As Your Honor will recall from the sale hearing, GBRP purchased designation rights for all of the debtors leases and under the APA the designation rights period would run through February 28th, 2025 and can be extended by GBRP in its sole discretion until March 31st, 2025. The debtors submit that given the designation rights period in the APA extending the deadline as requested in the motion is appropriate under the circumstances. GBRP certainly needs the certainty that it could exercise their rights as bargained for under the APA and to the extent GBRP does not designate a lease during that period the debtors will need

time to determine what to do with those leases which is why the full 210, instead of just to March 31st, is appropriate here.

Your Honor, Section 365(d)(4) provides that the deadline can be extended for cause which is, as we know, not defined in the bankruptcy code. Rather, the decision to extend is within the sound discretion of the Court. As set forth in our papers, there are certain non-exclusive factors that courts have used to evaluate whether cause exists. The so-called Burger Boys factors. We believe that the record in these cases, particularly after the sale hearing, demonstrates that the factors do weigh in favor of extending the deadline.

Again, I won't go through all of the factors but, for example, the leases are certainly an important asset of the estate and, again, I will point back to that Paragraph (u) of the sale order that I just quoted. And, obviously, the value of the designation rights are derivative of the value of the leases themselves. These cases are certainly complex given the number of leases across the country, numerous landlords. While the debtors have been before the Court since September, the sale to GBRP has only closed three weeks ago. Importantly, as set forth in the record of the sale hearing, GBRP is paying the go-forward occupancy expenses as set forth in the APA and the agency agreement.

Your Honor, there were eight objections filed. We are pleased that we resolved all but one at this point. Just to go through those quickly:

Docket 1435 was filed by various landlords, that has been withdrawn.

Docket No. 1439 was filed by Core Shoppes, also withdrawn.

Shortly before the hearing Steger Towne Crossing withdrew their objection. Their objection was filed at 1440.

We were able to resolve in advance of the hearing the objections filed by Commodore at 1447 and Kin at 1438.

Then we have also had constructive dialog with Mr. Gold who filed an objection at Docket No. 1701 and Ms. Roglen who filed at Docket 1703. With respect to Mr. Gold, I think we are just confirming some amounts but we should, otherwise, be there. And with respect to Ms. Roglen who has a good number, as you know, of landlords in this case, we are still confirming a few numbers but believe that we have resolution as set forth -- as I will set forth right now.

I guess two pieces to that. One, we are continuing to go through our records to make sure that our records, the landlords records on go forward expenses are clarified, that everything matches up. Second, realizing that there is a good amount of work to do to go through the 20 or so leases that are remaining, what we would propose solely with respect

to the leases at 1703 is to extend the deadline to our next omnibus hearing. Hopefully by then it will all be resolved and that we could then announce a resolution and have it extended for the full period but certainly understand Ms. Roglen's desire to reserve rights there.

So that really leaves just one objection which was the objection filed at 1414 by Edgewater Park and this was filed on December 23rd and I think the date here is particularly relevant. It was filed after the status conference on December 19th where we announced that the Nexus sale was not going forward but it was before the GBRP sale hearing, before the sale was approved, before the motion was even filed. We think that the facts have certainly changed since the filing of that objection.

For example, the movant there alleges that, and I am quoting from the objection, "There is little reason to suspect that the unexpired leases will play a crucial role in the debtors reorganization." Obviously, the designation rights and the GBRP APA certainly undercuts that. And given that the facts and circumstances are very different the debtors, through the GBRP sale order, are paying the go forward freight we believe that the objection should be overruled.

So, I will just pause there.

THE COURT: Okay, let me hear from the objector.

MR. ALBERTO: Good afternoon, Your Honor.

THE COURT: Did the committee want to be heard? I just -- let me hear anybody who is in support of the motion.

MR. ALBERTO: Thank you, Your Honor. Justin Alberto from Cole Schotz on behalf of the committee.

Very briefly, a little less then a month ago we stood before this Court and took the position that allowing the GBRP liquidation, as opposed to immediate conversion was in the best interest of these estates as the most value maximizing alternative that was available at that time but only on the express condition that stub-rent and post-petition rent continued not only to be budgeted but paid.

I understand this to be the case. We thank the debtors and their professionals and the landlords ands their professionals in working through the reconciliations but as long as that is the case the UCC supports this motion which I believe is necessary to give effect to the GBRP APA and allow these liquidations to continue.

Thank you.

THE COURT: Thank you.

MR. FOX: Good afternoon, Your Honor. Steven Fox, Reimer & Braunstein, on behalf of Gordon Brothers Retail Partners LLC in its capacity as buyer under the asset purchase agreement approved by Your Honor in your January 2nd, 2025 order.

I won't repeat everything that Mr. Piraino said, but suffice it to say that the designation rights, as reflected in this Court's order, were a critical and essential component of the asset purchase agreement and the overall transaction approved by this Court. To date, my client has committed over $400 million to this transaction between the initial purchase price payment, stub-rent payments and the budgeted expenses in addition to the amounts payable under the agency agreement which is part of the asset purchase agreement. A critical component of that is the designation rights.

As Your Honor will see in the last three items on today's agenda, we have been working diligently with the debtors and third parties to realize value in respect of the designation rights. We do expect, as has been publicly announced, that Variety Wholesalers, our partner in this transaction, will be designating not fewer then 200 stores as early as this Friday which will be the subject of notices that will be filed with the Court shortly thereafter but this process is moving a pace with diligence and vigilance and with the cooperation of all the parties concerned. We believe that the 365(d)(4) extension is not only warranted here but also essential in order to give us the full benefit of the transaction that was previously approved by this Court and we would ask that you do so today.

Thank you, Your Honor. Happy to respond to any questions you may have.

THE COURT: No thank you.

MR. GOLD: Good afternoon, Your Honor. Ivan Gold of Allen Matkins.

We had filed an objection, as Mr. Piraino noted, at 1701 on behalf of two landlords affiliated with River Oaks Properties. Just so the record is clear and complete, we have been working with the debtors. The stub-rent has been paid, other sums have been paid. There are, I'll call it, some loose ends or short pays with respect to January that in the big scheme of things are de minimis enough that we will figure out a way to solve that problem. Obviously, with the appropriate reservation of rights if we don’t but with that those remedies would be separate from the (d)(4) objection. Our objection at 1701 can be considered resolved and withdrawn for purposes of an extension.

THE COURT: Thank you.

MR. GOLD: Thank you, Your Honor.

UNIDENTIFIED SPEAKER: Good afternoon, Your Honor.

THE COURT: Excuse me, one more.

UNIDENTIFIED SPEAKER: I'll sit back down.

THE COURT: Ms. Roglen.

MS. ROGLEN: Good afternoon, Your Honor. Laurel Roglen of Ballard Spahr on behalf of various landlords.

As. Mr. Piraino noted, we did file an objection to the 365(d)(4) extension motion at Docket No. 1703. We have approximately 30 remaining leases that have not yet been rejected in these cases and we have been working diligently with our clients, and with the debtors, and their professionals to identify any issues with payment of post-closing lease obligations and stub-rent. We have identified about a dozen right now that haven't been resolved yet but that is just, frankly, I think largely a function of timing from when the sale closed, when those obligations became due, when Gordon Brothers funded, when those payments were then made to landlords.

So, we agree with the resolution, as Mr. Piraino noted, that we will do an extension with respect to our clients, we will agree and will not oppose entry of an order extending the 365(d)(4) deadline through the next omnibus hearing date on February 26th to hopefully allow us to resolve all these issues and if not to bring it back before this Court, of course, without prejudice to rights of the debtors to obtain a further extension at that time.

Thank you, Your Honor.

THE COURT: Anyone else?

MR. NIEDERMAN: Thank you, Your Honor. Seth Niederman from Fox Rothschild on behalf of Edgewater Park Urban Renewal, LLC.

Your Honor, we did file an objection. As we state in our papers, our client has prospective tenants that are interested in the property and are asking for when they can get it, when it will be available, which is an uncertain item at this point. We feel that the 120 days have passed, more then 120 days, with the bridge order and that it is appropriate, at least as to our lease and we are not saying in total as to the motion, that the deadline not be extended.

I understand the argument as to the change in circumstances but from what I hear on that argument is that the extension is critical to GBRP, not to the debtors. That is an important distinction. GBRP bought these designation rights subject to a looming deadline to assume or reject. At this point extending it would be doing so for the benefit of GBRP not for the debtors.

So, I will rest there on my papers. Beyond that, happy to answer any questions but we feel, at least, as to the Edgewater lease the deadline should not be extended.

THE COURT: I'm curious, have there been communications with respect to specifically the Edgewater Park lease?

MR. NIEDERMAN: I know there have been discussions about payments but as to the assumption or rejection not to my knowledge.

MR. PIRAINO: Your Honor, for the record Stephen

Piraino, Davis Polk & Wardwell, on behalf of the debtors.

Just very briefly, Your Honor, I think the first point sort of who is this important to, of course, its important to GBRP but its equally important to the debtors who are a party to the APA. This is a core of our reorganization, the core of these cases, and we have obligations under the APA, you know, including to insure that GBRP can exercise its designation rights so incredibly important to us.

Then, you know, with respect to ongoing discussions, you know, myself, Mr. Fox, we are always available to discuss with folks. You know, we are happy to have conversations. That being said, you know, we do believe that there is sufficient cause to extend the deadline and we appreciate that folks are reserving rights, as Ms. Roglen and Mr. Gold said, but we do believe that is appropriate to extend the deadline at this point.

THE COURT: Do you want to be heard further?

MR. NIEDERMAN: Nothing further, Your Honor.

THE COURT: I am going to overrule the objection of Edgewater Park and grant the extension but I want Edgewater Park continued to the next hearing together with Ms. Roglen. I do find, as a general matter, that cause exists to extend the deadline for 90 days including the importance of preserving optionality with respect to the leases and the

time required to give effect to the designation rights. But as required by 365(d) debtors must continue timely payment on account of post-petition rent obligations arising with respect to these unexpired leases.

MR. PIRAINO: Thank you, Your Honor. Understood. We will work right after this hearing, or, frankly, folks at our office can do it during this hearing, with counsel to Edgewater and with Ms. Roglen on the form of order which we will submit under COC so we can get that signed up today.

THE COURT: Okay, thank you.

MR. NIEDERMAN: Thank you, Your Honor. May I be excused?

THE COURT: Yes, you may be excused.

MR. PIRAINO: And if Your Honor will just allow me to grab my notes that I forgot.

THE COURT: Yes, certainly. And anyone else who wishes to be excused after their matter is presented feel free to leave.

MR. PIRAINO: Okay, Your Honor, the next place that we would like to go is on the administrative claims motions. There are three that are before the Court today and before ceding to counsel who has filed -- the Morris James firm filed those three motions. I did want to give Your Honor an update on where we stand given the volume that were filed and as Mr. Shpeen mentioned in his opening remarks that we are

proposing a process for the reconciliation of administrative expense claims.

So, there are two categories of these, the trade vendors and the landlords. Starting with the trade vendors, six movants had filed motions before the sale hearing and an additional 17 were filed after the sale hearing that were originally noticed for today. Just, you know, for sake of completeness there are a good number of motions that were originally set for the February hearing. So, just focusing on what was originally noticed for today.

Of those 23 motions, each of the movants has agreed to adjourn until the February omnibus hearing and I do just want to specifically note two of those motions, Giftree Crafts Docket No. 1584, and Hybrid Promotions Docket No. 1421. We have, obviously, been in contact with counsel to all of the movants but with respect to Giftree specifically, you know, we have taken a look at our records, they have taken a look at their records, I think we have a very small difference, about $5,000.

So, we are happy to continue working with Miss (indiscernible), counsel to Giftree, to make sure that our numbers align with their numbers. Similarly, with Hybrid Promotions, we and AlixPartners have been in repeated contact with their counsel, Mr. Carroll, and understand the delta between their asserted claim amount and what our records show

is also quite small. So, you know, we will certainly continue working with Mr. Carroll to reconcile those amounts on our end.

Then with respect to the landlord movants, there were 12 motions filed for stub-rent and other amounts purported to be due under Section 365(d)(3). So, of those 12 we were able to fully resolve one, Paragon Windermere and Lebanon Windermere (phonetic), that was for stub-rent and that has been paid in accordance with the GBRP sale order. The remaining motions were either adjourned, those eight, or the three motions filed by the Morris James firm, Ogden Plaza, BDPM Group, and Hartsville which are going forward today.

Just to say, you know, we strongly believe going forward on those three motions today is not the right -- it's inappropriate given the circumstances of the case right now. We are continuing to reconcile amounts that are due. We think it's appropriate to, frankly, let the process play out a little bit more. As Mr. Fox noted, there will be further clarity at the end of the week which stores are being assumed. If the stores are being assumed cure costs are naturally going to take care of these amounts; otherwise, we are continuing to reconcile and it does take time. I will, you know, let the Morris James folks handle their motion and we can respond at that point.

THE COURT: Can I stop you there a minute.

MR. PIRAINO: Sure.

THE COURT: Is there an actual process in place. I know the motion, you know, asked for the Court to defer until there was a process. Is there a process?

MR. PIRAINO: So, Your Honor, we are going to be -- this leads me, sort of, to the next piece of this which is to give a walkthrough of the --

THE COURT: Yes.

MR. PIRAINO: -- proposed procedures. So, we are going to be filing a motion with these procedures. We are continuing to work with Mr. Alberto and the committee on them. We will be sharing a form of the motion with them. Obviously, welcome their feedback. But if Your Honor would allow, I just would like to walk through what we are proposing to do.

So, thinking of this as, sort of, three pillars. The first pillar of the procedures would be the establishment of a bar date for pre-sale closing administrative claims. So, everything up to January 3rd we would propose, again subject to discussions with the committee, around 21 days for a bar date which we believe would give folks adequate notice. The second pillar of that is, you know, the actual allowance process. While, you know, we do need to set a bar date we also don’t want to make this unduly burdensome on creditors.

So, we think that the most transparent and equitable way to reconcile the claims would be to file and serve, essentially, a schedule like we would do with prepetition claims that list out what the debtors believe to be their administrative expense exposure for trade vendors, for landlords.

If a claimant agrees with what is scheduled then no further action is required. If they don't agree with what is scheduled, they would file a proof of claim form. We would provide a form with our motion. The debtors would then have a period of time to reconcile any disputed amounts. And we are hopeful that we, of course, could continue working constructively with parties to avoid coming back before the Court but if there is an amount that we can't reconcile then we would seek Your Honor's intervention.

So, you know, again, the procedures are not in front of you today. There are a couple of details that need to be ironed out but we do believe rather than the filing of -- I think we are probably at 50 plus motions and expending estate resources, resources of everyone in this room going motion by motion that doing a process like this will both protect claimants rights and promote judicial efficiency and economy.

THE COURT: So, speaking of resources and economy, so for those parties who have already filed motions would they then have to file separate --

MR. PIRAINO: No, Your Honor. We will, of course -- they will be scheduled and if -- you know, just to use an example, if we schedule it for $1 and in their motion, they ask for $5 they won't have to file a separate claim. We will know that from the filing of the motion and what they asserted in there that there is a disputed amount.

THE COURT: Okay, and would you anticipate getting this motion on file for a February hearing?

MR. PIRAINO: Yes, Your Honor. We would like to get it on file in advance. February 11th would be 14 days' notice but we are working hard to get it on file in advance of that so that it could then be heard on the 26th.

THE COURT: Okay, is the hearing February 26th?

MR. PIRAINO: Yes. So, I guess the 12th is the 14 days. Math is not my strong suit today. And, Your Honor, just to say, at this point with the -- again, I will cede the podium in just a minute to the ones that have not been adjourned but we do believe that granting any of the motions at this point would just, sort of, undermine the process. We realize there is not a motion before you but we were able to get, you know, 30 some odd folks on board with the contours of this process and we believe it would be unfair to the remaining claimants to, sort of, do these on an ad hoc basis.

THE COURT: Okay.

MR. ALBERTO: Good afternoon, again, Your Honor.

Justin Alberto, Cole Schotz, on behalf of the committee.

The committee is fully supportive of claims being filed, reconciled to whatever extent possible, ultimately paid as quickly as possible. That process should be orderly and organized both to give claimants a fair opportunity to submit their claims and also to minimize any costs of the estate professionals expended in reconciling them. What that process shouldn't be, Your Honor, is a race to the courthouse. That would be inconsistent with this Court's precedent and while it may benefit a few, I would believe it would cause more harm to the many since not every creditor in this case has the benefit of attentive counsel and likely won't understand that they even have to file a claim until they receive notice of an admin claims bar date.

So, with that, Your Honor, I think these are better off left for an orderly process and we look forward to continuing to work with the debtors in what that process and the details look like.

THE COURT: Okay, can I ask one question --

MR. ALBERTO: Of course.

THE COURT: -- before the debtors and the committee sit down. Do I understand that you talked about the pre-sale closing and I think I might have derailed your presentation. Were there more than one bucket?

MR. PIRAINO: So, Your Honor, for the record

Stephen Piraino.

With respect to the procedures, it would just be for the pre-sale. The post-sale will be paid in accordance with the administration budget as noted at the sale hearing.

THE COURT: Okay. Mr. Kunz.

MR. KUNZ: Good afternoon, Your Honor. Carl Kunz on behalf of objections filed by Ogden at 1436, BDPM at 1451, Shops at Hartsville at 1566.

Your Honor, I appreciate the debtors wanting a streamlined process but I will start with, you know, we were at a hearing for a long time on New Years Eve where the issue of what exactly go forward expenses were and which ones were going to be paid, we had been asking for a month as to whether that includes the true ups that had been billed and will become due under 365(d)(3) that Your Honor just said is material with respect to, at least, in this particular circumstance BDPM, which is owed $45 plus thousand dollars as of tomorrow, and Shops at Hartsville which will be owed $22,000 plus as of the 27th, next Monday.

All we did, Your Honor, we were happy to continue with the other 32 motions that were filed as long as we got assurances that those amounts would be paid as and when due. The debtors would not provide that confirmation and have not provided that confirmation as of today. And the fact is, Your Honor, there was absolutely no substantive response to

our motion. Despite having the bills for over a month or a month, there has been no question about those bills whether they're due, whether they're appropriately calculated; they have had them and we have had not response as to whether they have a question about them or whether they are going to pay them most importantly.

Instead, the response says, well, we shouldn't have to do anything. We're going to provide a process for dealing with administrative claims that Your Honor just heard. The fact is there is a process, its called 365(d)(3). Those amounts become due under the terms of the lease within 30 days of being billed. They have been billed. The debtors ought to be able to know now whether those amounts are going to be paid or not. That is all we ask. If they are not, one of my clients wants to immediately cease GOB sales at their property, that's BDPM, and have that lease returned to them immediately. If they are going to be paid then BDPM, like others, will have to ride out the process so long as those amounts are being paid in the ordinary course but as of right now, we have no assurances that those amounts are either budgeted or are going to be paid in the ordinary course. We think we are entitled to that.

So, Your Honor, again, BDPM is due $45,000 plus as of tomorrow and Shops at Hartsville is due $22,000 plus as of January 26th but I think its ultimately Monday, if I have my

dates correct. Your Honor, that is all that we are asking for is a confirmation today, no testimony, no anything. Our go forward expenses under 365(d)(3) that are becoming due are they going to be paid. I don't need to wait for an administrative process that may be heard at the end of February. We are not lumped into that administrative process. Some of my clients are. Some of my clients had pre-closing administrative claims and they will be in that process but for, at least, BDPM and Hartsville they are not in that process with respect to these payments and I would like to know whether they are not going to be paid or not.

Thank you.

THE COURT: Okay, let me hear from the debtors.

MR. PIRAINO: Your Honor, for the record Stephen Piraino, Davis Polk & Wardwell.

Your Honor, with respect to the asserted amounts, you know, the debtors are happy to continue to work with Mr. Kunz. Again, I think we do need to go -- there is, again, over 800 some odd leases here. I do think we need to reconcile our records against his and be given an opportunity to do that. We are not looking to undo the sale order or what was budgeted. It will be paid pursuant to the sale order. We just need the opportunity to go through these and, again, we are happy to work with Mr. Kunz on that.

THE COURT: Anyone else want to be heard?

(No verbal response)

THE CORUT: I am very sympathetic -- Mr. Kunz, did you want to be heard?

MR. KUNZ: No, Your Honor.

THE COURT: Okay. I am very sympathetic to the objectors in this case but I also agree with the debtors and the committee that under the facts of this case it isn't a prudent use of time or expense engaging in ad hoc litigation of claims. So, the debtors really do need to implement, timely implement, an orderly process to reconcile and determine the validity of administrative expense claims. It's important that this process be orderly and equitable but its also important that the debtors communicate with creditors.

So, at the expense of sounding like your mom, I am going to suggest that the parties here speak because I don’t want the end of February to roll around and we're in the same predicament we are here today adjourning because we haven't had an opportunity to look at claims. And I mean that as no disrespect to anyone.

MR. PIRAINO: Of course, Your Honor. Completely understood. We definitely will use the time between now and the next hearing to resolve as much of this as we can. We certainly want to get people on board with the procedures and folks such as Mr. Kunz who believe that it may be a post-

closing and covered by the APA, we will certainly work with him and hopefully not have to bring any further disputes before Your Honor.

THE COURT: Thank you.

MR. PIRAINO: Thank you, Your Honor.

THE COURT: I welcome disputes. What I don't appreciate is when parties indicate that they haven't gotten responses and that is all I am asking is to have communication.

MR. PIRAINO: Understood, Your Honor.

THE COURT: You may disagree ultimately, and that's fine, but communicate.

MR. PIRAINO: Understood, Your Honor. And at this point I think the next group of items on the agenda relate to certain lease matters, so I will cede the podium to my colleague, Mr. Goldberger.

THE COURT: Okay.

MR. GOLDBERGER: Good afternoon, Your Honor. Jacob Goldberger, Davis Polk, on behalf of the debtors.

There is one item that I think we can dispense with quickly and that is the motion that Ms. Heilman filed to compel rejection. We have been working constructively with the counterparties there. You know, the debtors filed this morning a notice of designation rights notice that we believe, and we're in agreement with Ms. Heilman, can push

this matter. I think we are going to reach out to Chambers to see if we can find some time to schedule calendars approving at the end of that designation period, some time in February, but I will cede to Ms. Heilman.

THE COURT: Okay, bring me up to speed. Sorry, I am not sure what all has been filed. I have been focusing exclusively on the agenda so if there is something else filed, please let me know.

MS. HEILMAN: Good afternoon, Your Honor. For the record Leslie Heilman of Ballard Spahr on behalf of the landlord, Highland and Sterling, LLC and Big Holdings 2, LLC, for Big Lots store located in National City, California.

I am happy to bring you up to speed with respect to the motion that I am presenting today; although, Mr. Goldberger almost stole my thunder. But we are here today on the landlords motion to compel the immediate rejection of the lease and surrender of the premises or in the alternative we sought relief from stay which was filed as a result of a number of the debtors defaults, among other reasons, with respect to the lease and it was filed at Docket 1605 on January 7th.

The debtors in turn filed an objection to the motion on January 15th at Docket No. 1727 which did make an umber of factual assertions that we don’t believe were supported by any evidence. So, in response we did serve them

with discovery on January 16th with a return date of yesterday at noon. The debtors have objected to those document requests in their entirety so all those responses are still outstanding but notwithstanding the debtors informally provide the landlord with two schedules to the APA that they believe are responsive to the landlords request and the landlord is still reviewing those documents.

In addition, since the filing of the motion, the debtors have communicated to the landlord that the utilities, security system and insurance to the premises have been reinstated and will remain in place, at least, through the end of January. An open point, Your Honor, with respect to that immediate harm to the landlord is that we will need to work to make sure the February operating expenses are covered. And about two hours before today's hearing the debtors now have filed a designation notice designating the lease for assumption and assignment to Burlington Coat Factory; nothing like waiting till the last minute.

THE COURT: I enjoyed reading your papers.

MS. HEILMAN: Your Honor, we do believe that many of the issues presented by the motion continue to exist but we also recognize the economy is a scale and we do believe there is some overlap in the issues that will be determined in connection with the assignment notice. In that regard we do believe that we would like to treat today as a scheduling

conference on the motion and we would like to seek some time though from Your Honor before the February 26th omnibus hearing because time is of the essence. This lease is sitting dark and there are reasons its in considerable default. The stub-rent has not been paid. So, the landlord continues to be harmed here but we do believe there is an overlap and we want to use the time to respond to the assignment notice, raise the issues that are present in our motion in conjunction with there, and reach an agreement on a schedule.

Shortly before the hearing, the parties were able to confer and they do believe the week of the 10th is open for the parties. Mainly the 13th is all parties seem to be available if Your Honor is available. That is a date that we would like to set a hearing that week.

THE COURT: Okay, I am going to have Chambers look for a date while we're here and we will get back to you.

MS. HEILMAN: In addition to that, Your Honor, I believe the objection deadline on the assignment notice will be February 4th. The week of -- we were talking about the week of the 10th for a hearing and February 10th as a reply deadline for both parties, both the landlord to reply to its motion and for the debtor to reply to any objection filed by the landlord.

In the meantime, I do believe the parties will continue to work consensually to resolve the issues. There

are discussions ongoing with respect to the stub-rent, the payment of the stub-rent. The landlord is in discussions with Burlington. All parties are working towards a resolution and we do hope that we will narrow any issues prior to that hearing.

THE COURT: Okay, I appreciate the parties working together. Thank you.

MR. GOLDBERGER: Your Honor, that brings us to the next lease sale matter which is a lease sale, proposed assumption and assignment to Burlington for the lease in Nashville. This is something that the debtors and GBRP seek to pursue. As an initial matter we filed, in connection with our reply to objections from the landlord and from Ross a motion to seal the Ross lease. We would appreciate if the Court could enter that motion as an initial matter.

THE COURT: Does anyone object to the sealing of the Ross lease?

(No verbal response)

THE COURT: Okay, I hear no one. I will enter that order.

MR. GOLDBERGER: Thank you, Your Honor.

There are four pieces of evidence that we would like to enter into evidence that we have listed on our exhibit list for today that we filed this morning.

THE COURT: Do you have a copy of that exhibit list

or can you tell me a docket number?

MR. GOLDBERGER: The four items are the debtors lease, the Ross lease, Ross is a co-tenant in the shopping center, the first leased modification is the debtors lease modification, and the memorandum of lease of the Ross lease. So, those are the four items that we understand all parties are in agreement to enter into evidence.

THE COURT: Does anyone object to the admission into evidence of those four documents, which are Docket Numbers 1737-1, 17 -- they're all 1731. Anyone object?

(No verbal response)

THE COURT: Okay, I hear no one. They're admitted.

(Exhibits received in evidence)

MR. GOLDBERGER: Thank you, Your Honor. With respect to the objections themselves and the question before Your Honor, the question before Your Honor today is very narrow. Let me start by explaining what the question is not. The question is not whether the debtors' lease allows for this assumption and assignment to Burlington. The assignment and use provisions of the debtors' lease undeniably provide authority for the debtors to assign this lease to Burlington.

With respect to Ross's restrictive use provision referencing Burlington, the applicable state law is clear. The debtors' bargained for the expanse of assignment and

usage rights they have under their lease. and Ross and the landlord were in no position to unilaterally restrict those rights at a later point. The landlord and Ross admit as much. Neither objection so much as mentions the debtors' lease in connection with this issue.

The issue before Your Honor today really has nothing to do with the debtors' lease at all. Rather, the question before Your Honor is the narrow legal question of interpreting Section 365(b)(3). Those provisions describe the heightened standard for adequate assurance in the shopping center context and require, in part, adequate assurance that the assignment of the lease will not breach any exclusivity provisions in other leases in the shopping center.

The question is simple: Are those Code provisions intended to protect the rights landlords bargain for in their leases with debtor tenants, or did Congress gift landlords new rights they don't have under applicable state law simply because a debtor/tenant filed for bankruptcy. The answer, Your Honor, is clear in the words of the Code, the legislative history, and case law.

Under the Code, adequate assurance is only assurance of obligations existing under the debtors' lease. What 365(b)(3)(C) means is that, to the extent that the debtors' lease requires them to abide by restrictive

provisions in other shopping center leases, compliance with those restrictions must be adequately assured upon lease assumption and assignment.

What 365(b)(1) says is that the trustee must provide adequate assurance of future performance under such contract or lease. The entire concept of adequate assurance is to assure performance of obligations under the relevant lease. 365(b)(3) then adds that for the purposes of paragraph (1) of this subsection, adequate assurance of future performance of a lease of real property in a shopping center includes adequate assurance, et cetera. By its explicit language, 365(b)(3) is clarifying the words adequate assurance of paragraph 1, it is not impacting the fact that adequate assurance is entirely assurance of performance under such contract or lease.

The intent of 365(b)(3) is simple. In the shopping center world, many landlords enter into carefully structured leases that preserve a certain tenant mix and interact with other leases in intentional ways. Often, if one stick is pulled out, the whole tower can collapse. Congress made clear in 365(b)(3) that to the extent a debtor's lease was designed to be subject to other leases in a shopping center, the landlord's interest in keeping the shopping center structure intact is valuable enough to enforce against the debtor and their assignee, but Congress

is not simply giving out freebies on the back of a bankrupt debtor. The legislative history says the same thing.

As the Third Circuit Court of Appeals in the Joshua Slocum case said that the intent of Congress in 365(b)(3) is to assure a landlord of his bargained-for exchange. The Fourth Circuit in In re Trak Auto also explained that, "Congress's purpose in 365(b)(3)(C) is to preserve the landlord's bargained-for protections with respect to premises use and other matter that are spelled out in the lease between the debtor and the tenant."

365(b)(3) is all about protecting existing rights, not creating new ones. The case law says the same thing. In the Toys "R" Us bankruptcy, the debtor tenant sought to assign a lease to Burlington in the face of a restrictive use provision in a Ross lease, the same facts that are here today. The Toys "R" Us court concluded that the preexisting Toys R Us lease was not subject to the Ross exclusive use provision or restrictive use provision under state law and that, therefore, 365(b)(3) was inapplicable. The Toys "R" Us court got it right and the debtors urge this Court to approve this identical assignment.

We will rest on our papers and the Amendola declaration filed at Docket 1375 with respect to our arguments that the Ross lease by its terms doesn't restrict this assignment.

And with respect to the 180-day go-dark period that Burlington is seeking, we just note that the go-dark period should be a matter of mutual interest. Burlington will be paying rent for the property upon assumption and is incentivized to get up and running as quickly as possible.

And with respect to the form of order, we believe that the form of order entered in connection with the other December-waived lease sales is appropriate, but we've had constructive dialogue with the counterparties and I think we can get to a place of mutual agreement on a form of order if this Court approves the assignment to Burlington.

THE COURT: Okay, thank you.

MS. OESTREICH: Good afternoon, Your Honor, Hailey Oestreich with Jackson Walker on behalf of Burlington here today. I know we just heard from debtors, so I agree with their points, and Burlington, as noted in our papers, fully agrees and supports and would like to partake in their argument. I'm not going to go back over everything for the sake of efficiency, but there are a couple points that I would like to make.

As debtors' counsel noted, there have not been any questions about whether Burlington, a Fortune 500 company, has provided or can provide adequate assurance for this lease. As debtors' counsel has noted, we're really here talking about the Ross lease, who is a third party not only

to this bankruptcy, but actually to the assignment at issue here.

As debtors' counsel noted, that this lease, debtors' lease does not have any restrictions that would prohibit this assignment if we weren't in the bankruptcy context. Instead, what landlord and Ross are asking you to do today, Your Honor, is make it so that the debtor actually has less rights and less of a chance to recover for the benefit of the estate in the bankruptcy context than out of it.

For all the reasons that debtors' counsel discussed about the language of the Code, the harmony of Section 365(b) and (b)(1) and (b)(3), and just the entire purpose of bankruptcy as a whole, we believe that Ross and landlord's interpretation of 365(b)(3)(C) should be rejected, and a strict reading should be rejected, because of the bizarre consequence that it could create in this case of granting a landlord additional rights in a bankruptcy that they would not have outside of it.

Your Honor, on the go-dark objection, we agree with debtors' analysis and that the go-dark provision is in fact an anti-assignment provision. As debtor said, my clients, if they did get this lease, would be paying rent during the go-dark period and would have every incentive to make the go-dark period as limited as possible.

The final point that I would just like to make is the impact that this might have on third party bidders such as my client. My clients went through a bidding process, were the successful bidder, and won through that process the right to assign this lease. By putting third parties in a position where they can spend money to not only go through the process, presumably win by becoming the successful bidder, but then having a fight where they're expending more cost to try to deal with these outside-party leases that don't actually govern the lease at issue, it could really have a chilling effect on who's willing to jump into this sphere if there's always kind of a bogeyman that might be in the closet that they have to keep an eye out.

And for those reasons, Your Honor, because the assignment to Burlington would not violate the terms of debtors' lease that we're trying to assign, Ross's and landlord's objection should be overruled here.

THE COURT: Thank you.

MR. FOX: For the record, Your Honor, Steven Fox, Riemer & Braunstein, on behalf of GBRP.

As you will hear for the next period of weeks a common theme and that is the value ascribed to the designation rights and the rights under the asset purchase agreement acquired by my client, this is the first in a series that you're going to hear, and we are acutely

sensitive to any effort by a landlord to expand its rights and otherwise limit the debtors' rights in respect of assumptions and assignments and to graft onto -- terms into the existing leases that don't presently exist, and otherwise seek to circumscribe the debtors' ability in furtherance of anti-assignment clauses. We expect that these are types of issues, given the age of some of the debtors' leases that are going to crop up again, and we'd like to, as the saying goes, nip it in the bud as quickly as we can.

This is a critical component for my client. We believe that the facts support approval of the assumption and assignment and grant of the debtors' request here before the Court. As Counsel noted, there is no actual objection to assumption and assignment relating to adequate assurance or any other dispute with respect to cure amounts or otherwise, and my client is four-square in favor of proceeding today with the assumption and assignment to Burlington.

THE COURT: Thank you.

MR. FOX: Thank you, Your Honor.

MR. ROOT: Good afternoon, Your Honor, for the record, Alan Root of Chipman Brown Cicero & Cole on behalf of 5620 Nolensville Pike LLC, which is the landlord for the shopping center at issue in Nashville, Tennessee.

I'll give my presentation in a moment, but I just wanted to address the last comment that Burlington made when

they were at the podium that they went through a process. I saw Your Honor nodding at that and I understand that argument, but I want to be clear on two points. One, the memorandum of lease, which is in evidence, Your Honor, was publicly recorded in 2022 in Davidson County, Tennessee, that's public record. It has the Ross exclusivity provisions in there. So this is not as if they were a bidder that are finding out about this at the first time while we're here at the podium, Your Honor, or after our objection was filed.

And further, Your Honor, Nolensville participated in that auction and prior to the auction did raise this issue. Nolensville was actually the backup bidder at $250,000, so there's only a $50,000 difference between the successful bid and the backup bid here, Your Honor. So these are not issues that came up post-auction, Your Honor, and so I think the parties were aware. So, to the extent there's an argument that they went through this process, they expended resources, it's not as if they're learning about it for the first time after the auction.

THE COURT: So would your argument be then it's case specific with respect to each lease that the landlord should investigate -- or the party to whom the lease is being assigned should independently go look at the lease and all the other leases in the shopping center to determine whether there are restrictions to subsequently signed leases?

MR. ROOT: Well, Your Honor, I think factually here that certainly could be an important factor, Your Honor. I mean, all the parties were well aware of this.

In general, Your Honor, I think Section 365(b)(3)(C) is very clear, it has two requirements, the debtors and Burlington have the burden on those. It's not just to show that there's no violation of the debtors' lease being assigned, but they also have to show that it won't violate other leases in the shopping center, including exclusivity provisions.

That's what the Code provides. The cases are sort of all over the place on this, Your Honor, and we recognize that cases like Toys "R" Us have said otherwise, but, respectfully, those cases are outside the Third Circuit, I think they got them wrong. They've collapsed the statutory provision into one requirement when there are two. And I think the Third Circuit in Joshua Slocum recognized that you need to look not just to the debtors' lease, but to the other leases in the shopping center, because that's what 365(b)(3)(C) says Your Honor should do. And it's very clear here, Your Honor, that Section 15.3 of the Ross lease prohibits other off-price competitors in the shopping center and it specifically names Burlington as a competitor.

And, unlike the cases like Toys "R" Us that were cited by the debtors, I think there's a factual distinction

here as well, Your Honor. Everybody said you only need to look at the Ross lease, well, I don't think that's true. I think the Burlington lease -- or, excuse me, the Big Lots lease that's being assigned and which is also in evidence has provisions in it that provide -- specifically at Section 4(a) that provide that you can use it for any other purpose, the leased premises for any other purposes, provided that it does not violate then-existing exclusive use rights in the shopping center. So there is a provision in the lease that is being assigned that references other exclusivity provisions, Your Honor.

And we think, Your Honor, that puts us squarely in other cases that have come out the way we are arguing here, Your Honor, which includes the Eastern District of Virginia decision in Heilig-Meyers, which is at 294 B.R. 660. There the court looked both at the debtor lease being assigned and at the lease that was -- another shopping center lease that had an exclusivity provision and, on similar facts, denied the assumption and assignment because it violated the exclusivity provisions of the non-debtor lease.

Your Honor, I'd also point you to the Three A's Holdings case with Judge Shannon, which is at 364 B.R. 550. There Judge Shannon, in applying 365(b)(3)(C), looked not just at the debtor lease, but also at restrictive covenants and restrictive use provisions that were recorded publicly,

and found that the assignment violated those and denied the assumption and assignment.

So, Your Honor, I think, as a general statement, the Code -- the plain meaning of the Code says what it says, but I think factually here as well, Your Honor, I think we fall into a camp of cases that would prevent assignment of this particular lease.

THE COURT: Let me ask you -- you cited to (4)(a), what does 4(a) mean by the provision "then-existing"?

MR. ROOT: That's a good question, Your Honor, and I read through that and gave that some thought. I think what it means here, Your Honor, is it says you can use it for any other retail purpose as long as when you're going to use it for that other purpose, at the time you're going to use it for that other purpose, it doesn't violate any then-existing use rights in the shopping center. Well, the purpose is going to change upon assignment, it's no longer going to be Big Lots, it's going to be Burlington. So you need to look at it as then as now, when the use changes, if the assignment was today, the use changes today, and is there an exclusivity provision in play today that would be violated.

Your Honor, I just want to make sure I don't have any other arguments here. I just wanted to point out, again, we are the backup bidder here, I don't think there's any -- to the extent the other cases like Toys "R" Us were focused

on the idea of maximizing the value of lease portfolios, certainly we understand the desire to maximize the value of lease portfolios in an effort for debtor to maximize the value of its assets, but factually, again, while that may be a policy reason to generally allow for assignment over exclusivity provisions, here there's no value-maximization issue. We're talking about a $50,000 difference between the successful bid and the backup bid. It's not as if it's $300,000 or nothing here, Your Honor. So I don't think there's any windfall to the landlord or any prejudice to the debtors here, Your Honor.

Thank you.

THE COURT: Okay. Thank you.

MR. MANN: Good afternoon, Your Honor, Kevin Mann from Cross & Simon on behalf of Ross.

I rise mostly just to join in with Mr. Root's argument, but there's one thing I did want to point out, and I think Your Honor noted this when you looked at the word then-existing in the lease. It doesn't say now existing, it doesn't just say existing, it says then-existing, which would lead us to believe that it would be at the time that the change is made, which will be here at the time of the assignment. So I think that puts us a little closer to Toys "R" Us. Even if we determine that Toys "R" Us was improperly decided, we can still say that this is distinguishable from

Toys "R" Us because Toys "R" Us, the lease that was being assigned did not contain any provisions that required compliance with any other lease's use restrictions.

The last thing I wanted to point out, Your Honor, is -- I think everybody has talked about the Joshua Slocum case, that case does say that the legislative intent behind the shopping center amendments was to protect the rights of lessors and the center's other tenants. Congress recognized that, unlike the usual situation where a lease assignment affects only the lessor, an assignment of a shopping center lease to an outside party can have a significant detrimental impact on others, in particular the center's other tenants.

So with that, Your Honor, I have nothing further, but would ask that Your Honor deny this assignment. Thank you.

MR. GOLDBERGER: Your Honor, with respect to 4(a) in the debtors' lease, there's a reason this wasn't mentioned at all in the papers that were filed. The permitted uses generally permit the right to use and occupy the demised premises for the purpose of the sale of general merchandise and there's no "provided, however" with respect to the sale of general merchandise. And we believe that it's clear that Burlington is a retailer that, you know, sells general merchandise, and that's why this wasn't raised in any of the papers and there's no proviso that says that any then-

existing exclusive use rights apply to that type of sale -- or that type of usage.

We also do believe that then-existing is a reference to the time of the entry of this lease, but we would argue that the use here is general -- the use is the sale of general merchandise and is not subject to that provision of the lease at all.

We'd also say that with respect to the Joshua Slocum case, the case there makes clear that Congress's intent was to protect the bargained-for rights, and that includes the bargained-for rights of the other tenants in the shopping center, that's for sure. And that's part of the structure of a shopping center, but the debtors were here first and the debtors bargained for the rights that they have, and there's nothing in the Code or in the legislative history that we believe provides a right that wouldn't exist if this would have been -- if the debtors would have tried to do this assumption on September 8th of last year, a day before this -- the day before this bankruptcy case started.

THE COURT: Let me just -- bear with me one second.

What is your response with respect to the memorandum of lease having been on file?

MR. GOLDBERGER: So we understand that the memorandum of lease was public and parties were on notice of

the fact that there was a subsequent lease that had certain rights vis-a-vis the -- that tenant, Ross, and the landlord, but to the extent that those aren't binding on the debtor under applicable state law -- and, again, it doesn't seem like this case would be in front of a judiciary if it would have been -- if the assumption and -- if the assignment would have been proposed on September 8th.

So we don't think it's necessary to look into the -- you know, anything that's publicly filed with respect to leases that aren't binding on the debtors' lease and that the debtor isn't responsible for under applicable state law.

THE COURT: Thank you.

MR. GOLDBERGER: Thank you, Your Honor.

MR. FOX: For the record, Your Honor, Steven Fox, I rise just briefly for two points in response to Counsel's suggestion that there's no prejudice from denying approval of the assignment today and forcing us to turn to a backup bid.

Candidly, Your Honor, we believe my client will be prejudiced in two respects. First, the risk and potential of a negative precedent which could have lasting effect on some 800-plus other leases that we are in the process of in the market now looking to assume and assign for value. To allow a landlord to graft additional rights and restrictions that don't presently exist in the debtors' leases will dramatically negatively impact on our marketing opportunities

going forward.

THE COURT: Well, how do you reconcile that with the cases the objectors cite?

MR. FOX: Your Honor, we don't believe those cases support their position. And, as debtors' counsel has said, the statute supports enforcement of the debtors' lease and any restrictions in the debtors' lease. The debtors' lease here does not include the type of restriction that the Ross lease suggests exists. The fact that it was publicly of record here too, in my opinion, Your Honor, in my view is of no moment. Yes, parties may have been on notice, either constructively or actually, and maybe they assumed some risk in that regard, but at the same time those parties when they appeared and bid on the lease were entitled to rely upon what they believe is an appropriate interpretation of the statute and the applicable case law. And that suggests, Your Honor, the result that the debtors seek today, and that is approval of assumption and assignment of the debtors' lease, which is not subject to any further restrictions of any other lease in the center.

Your Honor, the reality here is, you know, to the extent that these are shopping center leases, the debtors don't necessarily, in the absence of a specific restriction appearing in their lease, have access to the leases of every other tenant in the centers. And certainly my client doesn't

have access to those because those are confidential, private, proprietary information between the landlords and those other lessees. So --

THE COURT: Does it make a difference, though, that they raised it at the auction?

MR. FOX: No, Your Honor, I don't believe it does because, again, you're entitled -- both the debtors and the counterparties who were bidding on these leases, including my client, who are running a process now pursuant to the asset purchase agreement and the designation rights it acquired, has the right to rely upon what it understands the law is in this Court, as well as the case law that has come before this case. The collective interpretation of the debtors and my client is that the case law supports assumption and assignment and not enforcement of the restriction that Ross, who in my view is a mere interloper here in this case -- it is not a creditor, it's not a landlord, and therefore it doesn't have any rights in this court whatsoever. The landlord does, but we think the landlord is wrong on the facts and the law.

Also on the question of prejudice, Your Honor, yes, there's an economic component to this certainly. The landlord suggests that, well, if we get less money, it's not prejudicial to us. We fundamentally disagree with that notion. I'm not ashamed to say this is about money, you

know. As I said earlier in my remarks at the outset, my client has committed over $400 million to this transaction and continues to fund essential expenses of this estate in furtherance of its commitments under the asset purchase agreement, and in consideration and exchange for that, Your Honor, we're entitled, we believe, to have our rights enforced by this Court, and that specifically includes the designation rights that were part of the asset purchase agreement and a critical component of the transaction.

So we would urge this Court to overrule the landlord's and Ross's debtors and approve the debtors' motion seeking assumption and assignment.

Thank you, Your Honor.

THE COURT: Thank you.

MS. OESTREICH: Your Honor, Hailey Oestreich of Jackson Walker on behalf of Burlington. I would just like to make one final point.

As you're aware, the debtors' lease is significantly older from the Ross lease -- than the Ross lease, I believe by about 11 years. Debtors' lease originally did have an exclusivity provision, but you'll see in Exhibit 3, the first lease modification of debtors' lease, the debtors actually made a concession and modified their lease in order to let Ross into the shopping center. There was a bargain and the parties bargained to change debtors'

rights.

Ross, at the time, and landlord, at the time, didn't bargain for Big Lots debtors to give up their free assignment provision with no conditions on it. That's what the parties agreed to when all of these parties were brought together at the same time that debtors would keep their provision, they gave them the free right to assign to anyone without landlord's consent. If we're talking about the bargained-for rights, enforcing the provision as debtor -- or enforcing the assignment as debtors have requested and overruling Ross and landlord's objections is what the parties have bargained for when they all first came together back in the beginning.

MR. ROOT: Your Honor, again, briefly, Alan Root, for the record, on behalf of the landlord.

I would just come back to the plain language of the statute, Your Honor, and Counsel said we got it wrong on the law. Well, respectfully, the law is all over the place on this issue. And the Third Circuit, to the extent it's spoken on it, has spoken on it in Joshua Slocum and did -- whether it's dicta or whether it's a holding did indicate that you should be looking at not just the debtor lease, but the other leases in the shopping center, and that's what 365(b)(3)(C) says on its face. The plain language has two tests, you look at the debtors' lease, and you make sure that

it also -- the assignment doesn't violate the leases of the other tenants in the shopping center.

Now, I understand there's policy arguments here, but Congress enacted what it enacted, and that's the plain language of the statute. And, Your Honor, we think you should enforce the plain language, especially in the facts and circumstances that we've discussed here, Your Honor.

THE COURT: Thank you.

MR. GOLDBERGER: Just one final point, Your Honor. The case law in this circuit is limited, but I would just point Your Honor to the language in the Joshua Slocum case quoting from Congress that the purpose of 365(b)(3) is, quote, "to assure a landlord of his bargained-for exchange."

And, as the Counsel for Burlington made clear and as the leases here indicate, the bargained-for exchange was that the debtors would have the ability to assign and use the premises consistent with this proposed assumption and assignment, and that's the proposed assumption and assignment we believe the Court should allow.

THE COURT: Okay, thank you.

Anything further?

(No verbal response)

THE COURT: Okay. We're going to take a brief recess. I would say probably I'll be back around 2:30. Okay? Thank you.

(Recess taken at 2:15 p.m.)

(Proceedings resumed at 2:43 p.m.)

THE COURT: Please be seated. Thank you, everyone, for your patience. I appreciate you being patient and allowing me the time to look at my notes.

The landlord and Ross oppose the proposed assignment of the Nolensville lease to Burlington because it will breach certain exclusivity provisions contained in the Ross lease. The landlord argues that pursuant to 11 U.S.C. Section 365(b)(3) debtor cannot provide adequate assurance of future performance, and the Court must deny the proposed assignment to the proposed assignee.

The Nolensville lease is freely assignable pursuant to its terms. Section 22 of the lease provides that Big Lots "shall have the right at any time... to assign this lease without landlord's consent, provided that no such... assignment shall relieve tenant of any of its obligations thereunder."

In addition, paragraph 4 of the Nolensville lease permits Big Lots to use and occupy the premises for a number of retail purposes, including "for the sale of general merchandise."

Under paragraph 4(a), any covenants or restrictions of record affecting Big Lots' use were attached and incorporated in the Nolensville lease in Article 7(b) and

in Exhibit F. The Court disagrees with the objectors and finds the phrase "then-existing" does not apply to a future, unknown assignment.

The Ross lease was entered into after the Nolensville lease. Section 15.3 of the Ross lease prohibits the use of the premises for the "off-price sale of merchandise," or the use of more than 10,000 square feet of any premises at the shopping plaza for the display and/or sale of apparel on an off-price basis.

The landlord and Ross contend that the proposed assignee is an off-price retailer that intends to use the premise for the off-price sale of merchandise. They note that this lease specifically restricts Burlington. The Ross protection provision at 15.3, however, "shall not apply to the existing tenants listed on Exhibit L."

Here, the debtors are existing tenants under the lease. Big Lots is also listed on Exhibit L of the Ross lease.

The Ross lease does not restrict Nolensville lease assignment. The lease being assigned contains no provision requiring compliance with the Ross exclusive use provision; accordingly, the debtors' proposed assignment to Burlington does not violate the terms of the Nolensville lease.

Similar to Toys "R" Us, the lease to be assigned was executed long before the Ross lease was in effect, and

the lease here included nothing that requires adherence to the provisions of the Ross lease. On the other hand, Three A's is distinguishable. Unlike the issue here, Three A's involved covenants that run with the land and the interpretation of a permitted use under California state law.

This Court agrees with the reasoning of the District Court for the Southern District of New York in Sears and the New Jersey Bankruptcy Court in Bed Bath & Beyond that the provisions of Section 365(b) must be read in harmony with 365(f)(2)(B) and that the phrase "any other lease" could not have been intended to mean a subsequent lease between a landlord and a third party to which the debtor was not a party.

Applying the plain language argument would mean that the debtors are bound by restrictive use provisions in other leases that were entered into after the Big Lots lease, making the broad assignment provisions negotiated for by Big Lots unenforceable based on the landlord's subsequent agreement with a third party that the debtors were not party. As the Court explained in Bed Bath & Beyond, the ability of debtors to maximize the proceeds from their leases would or could be severely curtailed by landlord's subsequent agreement with other tenants to limit the use for which the debtor's premises were expressly allowed to be used without debtor agreeing to those terms. Landlords would be permitted

to eviscerate the debtor's negotiated bargain, a broad assignment provision, by subsequently entering into an agreement with any third party in the same shopping center that restricts uses the debtor was expressly permitted to have under the lease.

So the debtors' assignment of the Nolensville lease is permitted, including the going-dark provision, and I'll overrule the objection.

I understand that there's a revised form of order that will be submitted. And I would just ask that you do a clean and blackline under certification of counsel.

MR. GOLDBERGER: Yes, we will, Your Honor. Thank you.

THE COURT: Okay. Is there anything further?

MR. PIRAINO: Your Honor, for the record, Stephen Piraino, Davis Polk & Wardwell. There's one last thing we'd just like to note for you, Your Honor, as filed on our agenda. As you may recall, there were three lease holdovers from December, one of which was related to the Vero Beach property.

THE COURT: Yes.

MR. PIRAINO: The debtors do not intend to proceed with the assumption and assignment with respect to Aldi's and, in furtherance of GBRP's designation rights, a certificate of counsel has been filed to approve a

stipulation to enter into a lease termination agreement.

THE COURT: Okay.

MR. PIRAINO: We understand that Counsel to Aldi's would like to be heard on that, but I would just like to very quickly let Your Honor know the debtors' position on this and sort of how this, you know, sort of unfolded.

As Your Honor will recall, we had our November lease waive, some things were carried over and, you know, at the 19th we said we would push things to January. Obviously, something happened between the 19th and today, the sale to GBRP, including the sale of designation rights with respect to all of our leases. GBRP recognized that, you know, there were -- that there had been a prior process, they engaged with parties who were part of that prior process and, for example and what you just ruled on, the designation decision was the same as what the debtors would have done. That's not the case in every instance. For example, here, GBRP's exercise of their designation rights was with respect to a termination and, as Your Honor will have probably seen in the docket, the landlord here, you know, before any of this all happened --

THE COURT: This is PAM right?

COUNSEL: Yes.

THE COURT: Okay, all right. I just want -- oh, that's --

MR. PIRAINO: I needed my helpers back there.

THE COURT: I'm sorry, that's an acronym. Yes.

MR. PIRAINO: That's okay. Yes.

THE COURT: Okay, I just wanted to make sure we were talking about the right thing.

MR. PIRAINO: Yes. We think we've called all of these properties by different things.

So, you know, they've designated their -- decided to designate this through the termination with the landlord. Before that happened, even before the sale hearing, we understood the landlord was going to take issue with Aldi's. So the decision was made not just out of the blue, but, frankly, to resolve potential litigation, to enter into this termination. The estate supported that because avoiding litigation at this point for the estate is a prudent use of resources.

And just one last -- one last piece. Your Honor has approved, I think we're up to four or five of these lease sale procedures. So we know there's an order out there, there was an auction that occurred pursuant to the lease sale procedures, but the lease sale procedures, there's two important points I just want to note for the Court. The first is the debtors' acceptance of bids only occurs upon approval of the bids, nothing has been approved, and sort of the corollary to that is the debtors at any time can

terminate the sale process and pursue an alternative transaction. I think it's very clear we did pursue an alternative transaction, the GBRP sale.

So, with that, our position is we're not going forward. The certificate of counsel is on file at 1783, and we believe that it's consistent with the sale order and GBRP's designation rights.

THE COURT: Okay. Good afternoon, Ms. Bifferato.

MS. BIFFERATO: Good afternoon, Your Honor, Karen Bifferato on behalf of Aldi, Inc.

I rise briefly to introduce my co-counsel, Mr. James Rossow from Rubin & Levin in Indiana. He's been previously admitted *pro hac vice*. We filed those papers actually back in mid-December when we were teed up for a December 19th hearing. We actually thought everything was going forward at the 19th hearing in December, it was not. A lot has happened, and it's actually the process that we want to talk to the Court about today.

And before I hand the podium over to Mr. Rossow I did just want to mention, because debtors' counsel brought it up, the certification of counsel regarding the lease termination; that was filed under certification of counsel last night, we saw it today, we have a problem with it as of, you know, right now, depending on what happens. But we would ask that the Court not enter the order and we would submit

that it should not have been under certification of counsel, but we'll get to that in Mr. Rossow's presentation.

THE COURT: Okay.

MS. BIFFERATO: Thank you.

THE COURT: Well, I haven't seen it and it hasn't been entered. So --

MS. BIFFERATO: Great. Thank you.

MR. ROSSOW: Thank you, Your Honor, Jim Rossow, Rubin Levin, Indianapolis, Indiana, on behalf of Aldi, Inc. If the Court will permit me to walk through the story to provide context and of how we got here and why we're here on a hearing that I think the debtors believe, along with Gordon Brothers, was mooted by a lease termination agreement that was filed last night.

Aldi has participated as a bidder in this case for three properties. The Court has already found and approved transactions with three other properties in which Aldi was found to be a successful bidder. We have experience bidding in these cases. Aldi has 2400 stores, they happen to be postured that they are a good buyer for stores of this size. And in other cases, I know the parties mentioned Toys "R" Us, Aldi was involved in Toys "R" Us as a bidder. Any stores that have that footprint are ones where Aldi is a candidate to be a buyer. As a result, we have been a bidder in many bankruptcy cases.

A&G that has run this, brokering the liquidation of leasehold interests, obviously, is quite well renowned. We have been part of that process for many years. We know A&G well, we hold them in the highest regard, they run great auctions, and we've participated in many auctions, which brings us to Vero Beach. Well, if I can, let me back up.

There is one location, Taylor, Michigan, and Taylor, Michigan is a location that was in a shopping center. And I want to mention Taylor, Michigan because the lease at issue in Vero Beach is not in a shopping center under the Joshua Slocum factors. So that lease was under a shopping center, it had an alcohol restriction, and that's what this is about is an alcohol restriction. The debtors invited us to contact the landlords because they knew that the landlords would be taking issue with Aldi attempting to acquire a lease free and clear of an alcohol restriction. I believe the landlord in that case is represented by Kirkland & Ellis. We worked with them, worked out an amendment, and also paid the estate some price to acquire leasehold interest, and then amend the lease to address the landlord's concerns and also allow for operation and the sale of alcohol.

THE COURT: This meaning the Michigan?

MR. ROSSOW: That's the Michigan case and this is different. And I wanted to sort of explain that because we -- certainly we understand the difference and I think we bid

a much lower amount for the Taylor, Michigan case -- store location. Here, we bid on an auction held December 4th, after competitive bidding. We were the first opening bid at $150,000. There was also a cure amount that was at issue. I think at the auction, Mike Matlat at A&G, who runs the auction, had indicated with I think Mr. Goldberger also clarifying that there was a cure amount, roughly, at the time was determined to be $80,000.

So Aldi bid 150, plus cure, give or take, call it a $230,000 bid, but the dollar amount to the estate was $150,000. Havertys was also a competitive bidder. Of the locations that went up for auction, Burlington was there, that was a notable event, and there were issues in which the landlord made its objections clear. But Aldi bid, and it was a spirited round of bidding, and we went from $150,000 at $10,000 increments, with some skips in between, and Aldi wound up the highest bidder at $800,000. Havertys was a backup bidder at $750,000.

On December 5th, the debtor filed its notice of the successful bidders, and the hearing, I believe, was set for December 19th, as Mr. Goldberger had indicated.

The landlord filed its objection on December 12th, I believe, and that objection, I would characterize that diplomatically -- and I don't take issue with it, but I think it's true -- it was a placeholder objection. It was an

objection that said this is in a shopping center and, broadly speaking, citing the principle of *cum onere*, that the lease obligations must be borne by the assignee in their full regard.

We had discussion -- when I say we, the Aldi team had discussions with landlord's counsel to try to resolve these issues and it -- I should back up. So we had made a determination that this was not in a shopping center. I really don't think it's controversial, but we have a document in which the landlord indicates that it's in a shopping center.

So there's -- and I'm going to -- we have a brief on file that elucidates this, Your Honor, so I don't think I need to go into great detail, but there is a mall that was developed to the north of this property, that mall had excepted out the parcel that we're calling the Big Lots parcel. So it really -- it's not part of that REA, I don't think there's a colorable argument. There is with respect to our parcel, the parcel in question, there's Big Lots and Mattress Firm. So there are two buildings, they each have parking space. They're contiguous, there's ingress and egress, there's -- you know, there's the ability to move between parking spaces, but their parking is separate, I mean, one for one store, one for the other, they're facing opposite directions. There is a declaration, but that

declaration deals with very minimal issues of maintenance.

So, under the Joshua Slocum factors, this property is not in a shopping center. And somebody may disagree with me, but I -- you know, I'd love to have that argument because I believe we can prevail on that point.

What it does have is an alcohol restriction. And so, under our analysis, that alcohol restriction would not be subject to the heightened 365(b)(3) standards regarding use that we've been talking about, but would be subject to scrutiny as to whether or not it is an anti-assignment provision. We just heard earlier some discussion, I believe Burlington may have pointed out that the go-dark provision in the Burlington lease was *de facto* anti-assignment, right? Certainly something that comes up all the time. In fact, in this case the lease -- in our lease there really isn't a true go-dark provision. There is a continuous operation provision, but it doesn't read the way that we typically see a go-dark provision.

So, anyway, Your Honor, we're here, we believe we have a lease that we paid good value for, that it was below market. The idea -- and we have presented a declaration from Jordan Ford, the director of real estate for Aldi, it indicated what is obviously true, which is that where an Aldi can sell beer and wine in this market in Florida, that's where customer sales are better. So they do better when they

can sell beer and wine in Florida.

And I should say, just contextually, Florida is a state where beer and wine licenses are relatively plentiful, they're not a scarce commodity. So when people do their shopping, they want to pick up their beer and wine and that's just sort of a competitive advantage. So that's why Aldi paid -- offered to pay $800,000.

So, fast-forward, we have the objection. It is a -- maybe a barebones objection. We had some discussions with landlord's counsel, as the debtors had invited us to do to try to resolve our issues, I think they were happy. If we had resolved that issue, they would have been happy to stand by our transaction.

So we filed our brief and our supporting documentation, keeping in mind that we didn't really know what we were arguing against. So we had to argue about the shopping center not having really received a cogent argument about that, we argued about the alcohol restriction. We cited the Toys "R" Us cases, Aldi was a party in the Toys "R" Us cases. There are two decisions that came out of Toys "R" Us, one of them involves Aldi and it involves the shopping center issue -- not the use restriction issue, but a shopping center issue. And it involves the shopping center issue, not the use-restriction issue, but a shopping center issue, so we're familiar with Toys "R" Us.

But that brings us to more recent events. So, ALDI, from our perspective, we thought we were having a hearing on December 19th. There was some discussion about moving that hearing off. We were more than willing to do that. To be honest, the issue, which makes sense from the debtors' perspective is if they were going to continue the hearing, they wanted to make sure that the backup bidder would stand by and be prepared to close, and the second issue is the rent accrual.

It turns out that this lease, the rent was paid quarterly, so we actually had until March before the next rent is paid, so that provided time, which is why we thought we would have a hearing, here in January. So, we filed our papers. What we saw is we didn't hear from the debtors. I'm sorry, we didn't hear from the landlord and we had some discussion with debtors' counsel, Mr. Goldberger about our negotiations. They asked to see some language that we provided in typical leases.

And Mr. Gold is here representing the landlords, so he may speak to this issue and I'd like an opportunity to respond, if I may, but in any case, what we were told last week, we were informed that there was a lease-termination agreement that was worked out and that they, the debtors would not be proceeding with our transaction.

I will say, in termination of communication, and I

understand this happens, I know that this -- a lot has happened in this case. I heard Mr. Fox talk about a $400 million investment by Gordon Brothers. I get it. But we come in here in these cases in good faith. We play by the rules.

Your Honor, when Mike Matlat (phonetic) runs these auctions, the debtors' counsel transcribes those auctions, they require us all to listen to the bid procedures and confirm that we will play by the rules. We will not collude. We will not engage in anything other than bidding and good faith and that's what we do, and that's why we're here, Your Honor.

So, we find out that the deal, the landlord worked out a deal with, ostensibly with Gordon Brothers. It appears less than clear whether it's Gordon Brothers or the debtors; it's rely both. I asked for the disclosure of the amount of consideration, because I knew that that might be an issue. I didn't get an answer. I asked repeatedly. I've asked three times in the last eight days since we were told that a lease-termination agreement would be forthcoming.

We filed it last night, so what was filed under certification last night, Your Honor, that you didn't look at is a lease termination and the part that I cared about is how much was being paid by the landlord to the debtors. And this was also proved by Gordon Brothers. The amount is roughly

$660,000, but --

THE COURT: Say that again, $660,000 paid by whom?

MR. ROSSOW: Paid, ostensibly, and I could be corrected, by the landlord to terminate.

There is a cure provision, because, obviously, if we're at 800,000 and they're at 660, something doesn't add up. If you do the math, it works out to, wait for it, $800,000. Not a penny more than what we bid. Not even a topper, on top of what we bid. So, they bid the exact same as what we bid and now we're -- now, I understand that's going out under certification.

So, to back up, we thought we were having a hearing today. I understand the events that happened in December, Your Honor, and I want to carefully talk about that and address -- I think I sort of previewed my argument, which is why counsel talked about this issue about having the right to pursue alternative bids, because I understand that's what the point is.

And I would point out that there is a declaration that has not been admitted into evidence today, but it's on the record and it was identified as an exhibit, and that is the declaration from Emilio Amendola, as to the bidding process. That was filed on December 17th and that includes the sworn statements that ALDI was the highest-and-best bid for the Vero Beach property, all the kind of language that we

welcome and we agree with and that apparently was as true -- was true on December 17th and theoretically is still true today.

So, with respect to the Gordon Brothers transaction, because we weren't -- we now -- now, we get it. Now, I get why we have -- why I'm arguing for whether I even get to have an argument, Your Honor, and that is that the Gordon Brothers transaction ostensibly applies to the leases that, these leases that were subject to the auction that had not yet closed.

I will say that, as you know, Your Honor, there was the Nexus transaction and Nexus had worked with ALDI to provide capital for many of those leases on the Nexus side, but we were not pursuing those to the auction process that A&G was handling. So the four -- the three locations that I referred to earlier were the ones that were running outside of the Nexus process.

So, from our perspective, it made sense that we would pursue the transactions that already booked, that were ready to close, but for a few objections by the landlord that when the Nexus transaction fell through, that the debtor pursued an alternative with Gordon Brothers. I will say that, and I know the timing, but it's simply for the record, that that motion was filed on a Friday, December 27th. It was filed on shortened notice. There was a notice, a 2002(c)

notice. I would respectfully submit that that notice did not indicate what assets were being sold. It certainly did not disclose that the leasing question that we had an interest in was being sold. We thought that that was set over for a hearing and we thought that that, maybe rightly or wrongly, that that would proceed outside of Gordon Brothers. After all, the money was already under contract and would, once approved, come into this estate, independent of anything that Gordon Brothers did.

And keep in mind, Your Honor, that Burlington is, in fact, a transaction that proceeded at auction that the debtors elected to proceed with, whereas, this transaction, they've elected not to proceed with and take the position that Gordon Brothers has the right to terminate. So, as Your Honor knows, there was great urgency. Your Honor had a hearing on Monday, indicated that an order would be entered.

I will say that there was an asset purchase agreement filed with that motion. That asset purchase agreement refers to a schedule of "365 contracts." Now, that schedule was not filed with the Court, which happens. I know that happens in these cases, but it wasn't filed with the Court.

The Court held a hearing. The Court entered an order. When the Court entered an order, I should say there was an amended asset purchase agreement filed shortly before

the Court entered its order on January 2nd. That amended purchase agreement actually did away with the term 365 contracts, but it referred to, instead, "disclosure schedules."

The disclosure schedules, then, also, referred to 365 contracts. So it wasn't a direct schedule; it was a separate sub schedule of the disclosure schedules. And as Your Honor probably knows where I'm getting is, there were no contracts filed with that amended asset purchase agreement. Nothing on record with the Court.

And when the Court entered the order and the order was attached, that order that's attached also doesn't have any of these contracts. So there's nothing on record with respect to the Court's entry of an order indicating that this asset would be part of the assets that were being sold to Gordon Brothers.

So, with respect to the process, obviously, we weren't given an opportunity to bid competitively. I will tell everybody a secret, which is that we had more authority to bid at the auction on December 4th, but Havertys stopped bidding, so I didn't volunteer more money from ALDI to pay for the leasehold interest because Havertys didn't want to pay anymore. So, we were the highest bidder at $800,000.

I certainly am offering -- if you want to have the auction right now, we'll increase our bid, but it's notable

that the landlord didn't even increase, they didn't even top our bid.

And I understand what's going to be said. The argument is going to be made that there's a litigation risk associated with the cost. And so I will make the argument that's in our brief that also comes from Toys "R" Us. And I'm not giving sole deference to Toys "R" Us, Your Honor, but it is instructive and I think this point is relevant, which is, what is the value to the estate, right.

I think I heard it made in connection with the argument by the landlord as the backup bidder in Burlington. I think landlord counsel in that case said that we're only $50,000 away and the answer is, of course you weren't. Because if there weren't two bidders bidding competitively, then the initial bid would have been the highest bid.

So, in our case, I don't even know what Havertys' initial bid was, but it was something less than $150,000. So the competitive bidding process increased the bid up to $800,000.

Now, why is that? It's because we believe that the Court has the ability to sell and assign this lease free and clear of the alcohol use restriction.

I will say that I have had -- and I'm not asking the Court to determine that today. You know, Your Honor, I don't want to win in Court. I want to not lose. And I'd

like to not lose today by at least having an opportunity for the Court to address this issue, perhaps, at a full hearing, both, with respect to the Gordon Brothers' transaction, with respect to the request for termination, and what may underlie that.

So, for example, and I want to be very careful, but it occurs to me that I have not heard of Havertys, and I would not suggest they're doing anything wrong, but is it possible that Havertys might want to acquire this site and they may also be in the background of the transaction involving the landlord? It's possible. I wouldn't even accuse anybody. I'm not suggesting that it's improper.

But at least it would be something that would be relevant for purposes of competitive bidding for enhancing the bankruptcy estate. I know there will be a lot of comments from counsel, and if I can, I'll reply, hopefully very briefly, Your Honor, to all those comments.

I know Mr. Gold. I've had discussions with Mr. Gold. We had a spirited discussion during the break and I know he will make some (indiscernible) remarks, but what I would say, Your Honor, is we're not trying -- you know, I'm not trying -- I just want a fair shake. And ALDI wants to come back in these bankruptcy cases, and they will, they will be back. They happen to be in a position where they have -- they're the kind of business right now that is in the times

we are, they are able to acquire and expand and they're in that trajectory.

So, I can respond to specific issues. I will say if this is turning into a hearing on what I thought it originally was, which was an evidentiary hearing on something where the landlord has a burden, I have evidence, but I'm not sure that's what -- you know, we have our brief. I will say that we filed exhibits with our brief. Many of those are certified copies of records, so they're automatically admitted if the Court would consider looking at those. I believe those are admissible without the foundation, but we also have a declaration from Jordan Ford.

I don't think that the issues in the Ford declaration, I think they go to adequate assurance issues, but I'm happy to address those. So, with that, Your Honor, if I have the opportunity to respond, I'll turn it over to the other parties.

THE COURT: Thank you.

MR. FOX: Good afternoon, again, Your Honor.

Steven Fox, Riemer & Braunstein, on behalf of Gordon Brothers Retail Partners.

Your Honor, I'll be brief if I can. First and foremost, I want the record to be clear that from Gordon Brothers' perspective, we have absolutely no criticism of ALDI in this circumstance. We have every reason to believe

that in the process that Mr. Rossow described, that ALDI conducted itself in all instances, in good faith. And we also completely understand and get the fact that Mr. Rossow and his client are disappointed with where we are today, but the fact remains twofold.

First, the debtors have already advised this Court that it does not intend to pursue the transaction with ALDI, pursuant to the results of the auction, conducted back in December, as described. So, as a fundamental and starting point matter with this Court, there is nothing before the Court today on this matter. And while I appreciate the background that Mr. Rossow described to the Court, about the Michigan lease and about their view on Vero Beach, the fact remains that on January 2nd, this Court entered an order approving a transaction between the debtors and Gordon Brothers.

As has been described in earlier remarks today, that transaction critically included designation rights over the entire universe and population of the debtors' leases and contracts. My client, having evaluated the facts and circumstances of this particular lease and the positions of the parties, the debtors, the landlord, and ALDI, as the putative successful bidder back in December, made a conscious business decision, as is its exclusive right under the asset purchase agreement and the sale order from January 2nd, to go

and pivot in a different direction.

And rather than take on the litigation risk, as described, it decided that it would negotiate, in conjunction with the debtors, a lease-termination agreement with the landlord. In my view, the fact that the dollars and cents may be equivalent is of no moment. This is a business decision solely in the discretion of Gordon Brothers and, again, we mean no disrespect and no criticism of ALDI in this regard, but it is a business decision we've made.

We are not under any contractual or other obligation, statute or otherwise, to conduct any further competitive auction. In this particular instance, we determined not to do that.

Mr. Rossow described much about, you know, the hearing back on December 30 and December 31st, which led to the January 2nd sale approval order. The fact remains that his colleagues were present at that hearing on Zoom and made no mention whatsoever of their interests, made no attempt to exclude these assets, and as a result, these assets were included or this lease was included in the assets, subject to the asset purchase agreement.

There is nothing for this Court to decide today, insofar as Mr. Rossow's client is concerned. What is going to be before the Court, as Mr. Piraino mentioned, is a certification of counsel, accompanied by a lease-termination

agreement that has been approved by the debtors and Gordon Brothers, consented to us, by us, pursuant to which we intend to terminate the lease on consent with the landlord, pursuant to paragraph 42 of the sale order. We believe that is entirely appropriate by way of procedure, which the sale order explicitly provides that if there's an agreement among the parties, no hearing is required, no further objection period is required between those two principal parties, and we would ask the Court when it has an opportunity to review the certification of counsel, to enter an order approving the lease termination, as negotiated among the parties.

I'm happy to respond to any questions you may have, Your Honor.

THE COURT: No, I'll hear from others.

MR. FOX: Thank you, Your Honor.

MR. GOLD: Good afternoon, again, Your Honor.

Ivan Gold of Alan Matkins. I'm co-counsel with Mr. McDaniel for Premium Asset Management, PAM, not the kitchen product.

Your Honor, I'm going to start by quoting a longtime practitioner in front of this Court, Ms. Heilman's mentor, David Pollack. David once built an entire argument around an old ad campaign: There's Hertz and there's not exactly. And I channel that, because listening to Mr. Rossow's comments, I heard a lot of "not exactly." I

heard a lot of conflating issues. I heard a lot of conflating timeline. And I'd like to respond to the high points.

We start with the fact that the debtor made clear on Friday, they filed an agenda, that they weren't moving forward. That was preceded by phone conversations and emails earlier in the week. The debtor advised and Mr. Rossow acknowledged he spoke to Mr. Goldberger earlier in the week that Gordon Brothers had decided to go another way.

Well, I don't want to have to call Mr. Goldberger to the stand to establish the timeline that the reply brief or whatever you want to call it, filed by ALDI and the witness list, followed that phone call. They knew Gordon Brothers was going another way. What you saw is docket grandstanding, that they were going to go forward whether anyone else liked it or not, and we saw a lot of that today.

We saw a lot of argument about things that are moot. I don't know -- I think I just sat through, not one, but two motions for reconsideration. I think we saw a motion for reconsideration of your original bidding procedures order, Your Honor, back at Docket 612, which, Mr. Piraino referred to as paragraph 8 of the Court-approved bidding procedures says:

"Doing a deal with the debtor is not an acceptance of the deal under an order is entered by the Court."

That didn't happen.

Paragraph 12 of the same bidding procedures contains the traditional fiduciary out and in the language there it says that the debtor, in its discretion, at any time, prior to entry of this Court's order, may pursue an alternative transaction.

Exhibit A to the existence of an alternative transaction is my friend, Mr. Fox, who I know is uncomfortable today, because I don't think in the long time we've known each other, we've ever agreed more on a single topic than what's before the Court this afternoon.

(Laughter)

MR. GOLD: But the fact is, Your Honor --

MR. FOX: For the record, Your Honor, I am uncomfortable.

(Laughter)

MR. GOLD: Your Honor, counsel for ALDI said that he referred to being mooted by the lease-termination agreement. That's false; they were mooted by the Gordon Brothers' sale order. This was not an excluded asset. The debtor chose to go another way. Gordon Brothers bought it, bag and baggage, bought the deals, and they now have the decision-making ability, which they have exercised, under the designation rights.

So, not one order, but two support just simply

going forward with the transaction with the landlord. All the references about the auction and A&G, in the bluntest terms, Your Honor, A&G was ousted by your ruling on the 2nd. That process ended. We had two days of hearings where everybody involved in this case had an opportunity to be heard, ask for clarifications, objections.

Was ALDI here to say, Hey, Your Honor, we have this pending transaction. Can I get a clarification? Are we done? Do I now talk to Gordon Brothers? Are we still on?

They didn't do any of that.

So the fact is, Your Honor, that the process that Mr. Rossow complains about is history, like so much of this case. That was then, and since entry of your order authorizing the Gordon Brothers' sale transaction, this is now. And under that transaction, as well as paragraphs 8 and 12 of the bidding procedures, the debtor sold these, the rights to make decisions regarding the Vero Beach lease and others, and Gordon Brothers, in its business judgment, which it bargained, and as Mr. Fox said earlier, paid handsomely for, they've decided to go another way.

Now, Mr. Rossow said that they played by the rules, and that may very well have been true, but the fact is that the rules changed. That was a consequence of the failure of the Nexus transaction, the debtor being compelled to pursue an alternate transaction, which was contemplated,

and this Court approving that alternative transaction.

The price the landlord paid is not particularly relevant, or will pay, because of the litigation risks. Your Honor, I was fully prepared, but for the deal, to litigate with ALDI. We noticed the deposition. You can see that reflected in the docket. That was withdrawn in reliance on the fact that we had the deal. That was the deposition of the debtors' representatives.

We had quite a robust hearing, Your Honor, because I would have told you Toys "R" Us doesn't matter. This is free and clear of an alcohol restriction. This was bargained for in a lease in 2023 and I would argue to you that if you have the lease in front of you, and you don't, and this isn't the entirety of my argument, it's just to respond about the litigation risks, that I would argue to you it was a risk management and insurance provision. I would also tell you that ALDI's form of APA, which is on file with the Court, is greedy. And, yes, I choose that word very purposefully, because it didn't just wasn't to invalidate it for 365(f) purposes, it wanted you to excise that provision for all time. It wanted to transfer it free and clear, which I would have argued to you is completely impermissible under the Code, I don't care what case you cite.

I would also argue that there were indemnification problems with the ALDI APA, which excluded historical events

for which the debtor had insurance. We solved that problem in the Nexus sale order. We solved that problem with the Gordon Brothers' sale order.

But ALDIs didn't solve that problem; they defied it. I would argue that even if you went ahead with ALDIs, I would object on the basis of your Gordon Brothers sale order that says that those indemnification issues will be handled, but that's not what the ALDI APA said.

So, when Mr. Fox and his client made the determination to go another way, they not only had the right to do it under this Court's order, it was rational, because when Mr. Rossow says, Oh, there was no topping, yes, the litigation risks and the litigation costs, and to prove how invisible that apparently is to ALDI, he stands before you and is suggesting all these really wild procedures that we need to have going forward, just so ALDI can take their next shot at a process that passed them by. The cost would only go up, Your Honor, and that's the decision Gordon Brothers made and that's the decision they paid for and that's the decision-making ability you approved as part of that transaction.

So, as to get back to where Mr. Piraino started, I don't think there's anything before the Court today, and we've been talking for a while, but the debtor is not going forward with that transaction. As they were entitled to do,

the debtor pursued an alternative transaction, as they were entitled to do.

Gordon Brothers, who became the decision-maker under your January 2nd order, as they were entitled to do, has made a different decision. They are following the procedures under paragraph 42 of that order, with the certification of counsel, as they're entitled to do under this Court's order. So, I don't see any grounds for upsetting where we are and where we have been over the last several weeks.

Although, this is not precisely the forum, but the Third Circuit has long held that disgruntled bidders generally don't have standing, so even if you think it's a continuation of the same process, a winning bidder has been declared under procedures and the discretion that you granted. And just because ALDIs thought they had a deal, and I'm not suggesting at one time that might not have been in good faith, but the fact is that your orders made it clear there isn't a deal until you sign an order.

And we can look at the -- I don't know, I think we probably passed 1800 items on the docket by the time the hearing is done today -- you will not find an order approving the assignment of the Vero Beach lease in any of the 1800 items on the docket, Your Honor. So, without that order, they had no right to claim they had a deal and the rules

changed from the 30th to 31st, the 2nd, whichever date we want to pick. I'd like to think I wasn't the only one who could tell what was going on because I sat in your courtroom for those two days, but it was apparent that this was no longer the A&G process; this was now the Gordon Brothers process.

Gordon Brothers isn't required to have an auction. They get to do this at their own discretion. They can privately market it. They can solicit lease termination bids from landlords, as I'll tell you they're doing with other clients of mine, or they can run a public process. But they paid, as part of the multimillion-dollar consideration, they paid for that flexibility. They paid for that optionality and they have exercised it, and there's no reason to reconsider, at this point, that process, which has been approved by this Court and is in the process of being implemented.

Thank you, Your Honor.

MR. PIRAINO: Your Honor, for the record, Stephen Piraino, Davis Polk & Wardwell, on behalf of the debtors.

Your Honor, very briefly, I fully agree with what Mr. Gold and Mr. Fox said. I think one point -- I guess, just two points. You know, one, importantly, from the estate's perspective, we've been here for a good amount of time today already on this issue. We chose not to -- well,

I'm sorry -- Gordon Brothers decided not to go forward with this through their designation rights. The debtors have an obligation to follow those designation rights, which is why we, also, are not going forward and we think it's in the estate's best interests for the process that was approved by the APA, the sale order to be followed here and to not continue to have to expend resources on that.

And, also, I just think it's very important, just to underscore what Mr. Gold said about playing by the rules. The rules were the sale procedures. Those rules did change. They're the designation rights procedures. We don't need to get into a complicated evidentiary hearing on that. I think it's very clear, based on this Court's orders, where we're at, who has the ability to elect what happens with these leases. It's Gordon Brothers; they paid for it.

And I'd also -- just one last thing -- I said only two, I'll do three things -- the certification of counsel, which attaches the termination agreement, there is a waiver for rejection damages. There is a benefit to the estate from this, so it's sort of an added bonus for the estate. We avoid litigation. We're complying with our obligations to ensure that Gordon Brothers has their designation rights. And we're also getting the claims waiver, which, obviously, is beneficial to everyone who has a claim against the debtors. Thank you.

THE COURT: Thank you.

MR. ROSSOW: Thank you, Your Honor.

Jim Rossow, Rubin & Levin, for ALDI.

I do want to make a couple of brief points. One is that the deposition that was noticed was a deposition of the debtors' representative; it wasn't a deposition of ALDI. We would have been more than happy to press forward.

I think, I'm surmising that the debtor didn't want to have a witness stand for deposition. I don't think the Court should read anything into that, other than the fact that the debtors' posture was to not engage in any litigation.

With respect to the, with the sale procedures, we get it. This is bankruptcy. Courts have flexibility. But this assumption and assignment agreement is subject to New York law and New York, like many states, has an implied covenant of good faith and fair dealing.

My position is, and this will be relevant in other cases, Your Honor, is that we can't have this in these cases. A&G and the debtor identified ALDI's Vero Beach bid as the highest-and-best offer. And it's understood that the debtor will protect that transaction. Yes, we understand there's some litigation involved, but litigation is what drove the price.

I heard arguments that somehow the consideration

that's being paid doesn't matter, but it kind of does matter, doesn't it. It does matter because the math works out to exactly the same as what the ALDI offer is, right. Because if it didn't matter, Your Honor, I think you'd see a different number. And, you know, if it were me, it might be more.

I will stand by our proposal that we're prepared to pay more. I have authority. I mean, if it's okay, I won't say what my maximum authority is, but it's to go higher than the $800,000. It's to pay higher -- I will tell you 810, we'll go higher than that. So, we're prepared to pay more if we had a fair opportunity.

I think the -- once you're in the transaction, proceed, protect the transaction. I don't -- and I'm not criticizing the Court, but the identification of assets, it's not part of the notice. It's not part of the motion. It's not part of the purchase agreement. It's not part of the amended purchase agreement. That is what I'm being told poured my future in concrete and mooted everything, is an identification of assets that were never attached to anything on the docket.

So, Your Honor, I understand that this is difficult, but I can say that I'm not happy that we're here, but we bid in good faith and now I see, frankly, the transaction with the landlord to be diplomatic and somewhat

complementary is the landlord's counsel, and Mr. Gold became involved after that objection was filed, so he's talking about arguments that -- he's talking about the arguments that he would have been a formidable opponent; arguments that were never made in the objection. They were never made to the Court and that's the posture that we go into what would be a contested hearing.

And he is right, in terms of the timing of the brief. We actually -- it takes us some time to prepare these briefs, so we had drafted it, but we hadn't actually filed it, in terms of the timing. I think we needed an affidavit that we filed that we hadn't got a signature on.

So it's not that the debtor disclosed to us that there was a lease termination being negotiated and then all of a sudden, you know, in a day, we drafted a brief. We were drafting our response. We were fully intending to litigate.

Frankly, we were intending to litigate because we kind of didn't think we were going to get much support from the debtor, but that's okay. We're happy to do our job and ask the Court for relief, but that didn't happen in this case.

So, Your Honor, I would just say that with respect to the transaction, please don't approve the certification. I thought certification of counsel was in a situation where the parties didn't -- where there were no disputes as to the

relief that was being requested. And I know, Your Honor, I'm not -- I'm only admitted *pro hac* here, so I defer to the parties, but I can just tell you that without any animosity, and I will tell you, I heard a lot of animosity, a lot of the -- I mean, frankly, *ad hominem*.

I don't feel that way towards the lawyers, but I do know that this is a process in which, from the outside, it looks like the landlord who never appeared at the auction, who chose not to bid, chose not to assert an objection, all they did is notice up a deposition and the apparent posturing collapsed and then they did a deal with, they did a deal directly with the assignee of the buyer -- of the debtor, Gordon Brothers -- or the buyer of the debtors' assets.

So, I mean, it looks like they saw that they were not going to get relief in an actual contested proceeding, and so they did a separate transaction. So thank you, Your Honor.

THE COURT: Thank you.

Anything further?

(No verbal response)

THE COURT: I'm going to overrule the objection. I appreciate counsel's comments here this afternoon and I appreciate ALDI's participation in this process, but the bid procedures provided that the debtors' presentation to the

Court of successful bids and alternative bids would not constitute the debtors' acceptance of such bids, which acceptance will only occur upon approval of such bids by the Court.

The sale order approved the sale of the designation rights. Gordon Brothers has a court order approving its designation rights and Gordon Brothers paid for optionality, and it has exercised that optionality and proceeded differently under the circumstances.

So, I will review the matter under certification, but let me clarify for counsel, given what's gone on here today, I would ask that counsel have an opportunity to at least review the order under certification of counsel and communicate with the debtors and Gordon Brothers, with respect to the certification and the landlord PAM. And, of course, hopefully, you'll be able to promptly submit that to the Court.

MR. PIRAINO: Your Honor, for the record, Stephen Piraino of Davis Polk & Wardwell.

It's, of course, fine and, you know, we look forward to whatever comments there may be, which we'll discuss with Mr. Fox.

Just one last thing on the scheduling. Just to alert Your Honor on, I believe, the week of March 19th, we have an omnibus hearing scheduled. There are some conflicts,

so we're going to be reaching out to chambers to see if there's an alternative time, but we did just want to let Your Honor know that we will be reaching out to your courtroom deputy to see if there's an alternative time.

THE COURT: Okay. And you also need a hearing sometime the week of February 10th?

MR. PIRAINO: Yes, and I think both, Ms. Heilman and Mr. Fox have assisted on that, so, perhaps, I'll let Ms. Heilman handle that.

MS. HEILMAN: Good afternoon, Your Honor.

Leslie Heilman, Ballard Spahr, for the record, for the landlord of Highland.

Your Honor, yes, we wanted to revisit the week of the 10th for a hearing date, with respect to the Store Number 4126 and the assignment to Burlington. I think Burlington would also like to be heard, as to availability, as well, depending on what your Court's availability is.

THE COURT: We may have to move a couple of things to try to get something, because I have no availability on the 12th or the 13th and the 14th, I have a contested matter in the morning, so I may have to call and see how much time they think. And then the next week starts with a holiday.

MR. FOX: Your Honor, Steven Fox.

We would be fine the holiday week. We understand Monday the 17th is not an option. We've already imposed upon

Your Honor enough for holidays. But subject to Ms. Heilman's willingness to move into that week, we'd be, certainly, from Gordon Brothers' perspective, we'd be fine with that.

THE COURT: What are we contemplating, in terms of time?

MR. FOX: Hard to say, Your Honor.

Ms. Heilman is unhappy with the result of the transaction that's going -- that is the subject of the second designation notice filed earlier today. Her client wants control over the lease and we have designated it for assumption and assignment to Burlington.

Now, you've heard many issues about Burlington. We don't think there will be an adequate assurance of future performance question there. They have been approved by this Court as an assignee on multiple occasions, including in this case, but I don't want to speak for Ms. Heilman. She's very creative. I'm sure she'll come up with something, so it's hard to predict what we would expect.

But the designation notices on file, it does trigger a 14-day objection period. I think the debtors, Gordon Brothers --

THE COURT: Was this filed today?

MS. HEILMAN: Yes.

MR. FOX: It does, Your Honor, but we can set a hearing within X number of days after that so we have some

flexibility among the parties. Sooner is obviously better.

I, personally, will be in Las Vegas for a conference the week of the 10th, so I share Your Honor's difficulty in scheduling that week, but we are available the following week.

MS. HEILMAN: Your Honor, in terms of timing, as I stand here today, I can't really tell you how long it would be. I mean, we've had -- there have been other matters before you today that talked about whether or not it's a designation rights asset and not a designation rights asset. Your Honor, we're continuing to do discovery on that.

Contrary to some of the other matters you've heard today, this particular lease was not subject to any bidding procedures or bidding process, so the paragraphs 8 and 12 do not apply to this particular lease, Your Honor. And there is considerable harm that is still running to the landlord. I don't believe we have confirmation today that the insurance, utilities, and security will remain into February. We only have assurances through January.

We have been addressing these issues with the debtor since October. None of the rents have been paid on this lease at all. We have a half a million dollars that is outstanding to the debtor. We have reservations of rights in the designation notice that says that they're going to contest the cure.

Your Honor, time is of the essence. We've asked for a hearing the week after the designation notice was filed. We're not really sure why it was filed today. We had a pseudo auction on this lease a week ago Monday and we were told on Wednesday that it was a designated asset, but the debtors waited until today to file their notice of assumption.

That now pushes us into February. This should have all been concluded, actually, by the end of December, which is the position of the landlord. But we're now into January and now we're at the end of January into February.

Your Honor, respectfully, the matter needs to move forward. And I understand that Gordon Brothers paid for optionality and is exercising that optionality, but we do dispute that it's a designation rights asset. We raised these concerns prior to the sale hearing and got no response. And, Your Honor, we do dispute that it was a designation rights asset and that any benefit, if any, should be going to the estate, and that the lease-termination agreement that was accepted by the debtors, outside of any process, should be approved by this Court and the landlord should get its space back so no further harm is done.

MR. PIRAINO: Your Honor, for the record, Stephen Peraino, Davis Polk.

I'm not going to respond to each of Ms. Heilman's

points, but I do just want to, on insurance and utilities. Obviously, the debtor, and Mr. Fox has confirmed on behalf of GBRP, we'll ensure that if the hearing is the week of the 17th, whatever works for the Court, that utilities, insurance, et cetera, will be maintained through the hearing. We certainly wouldn't cut it off prior to any hearing.

THE COURT: Okay. Well, let me ask you this, does the response deadline have to be 14 days as to this, take it or leave it?

MR. PIRAINO: I mean, pursuant to the sale order, yes, I think that the parties could discuss, because, obviously, we've been in receipt of Ms. Heilman's motion for some time.

THE COURT: Right.

MR. PIRAINO: We could certainly discuss a more expedited briefing schedule if that --

THE COURT: I'm going to have my chambers look at dates and see what can be compressed, but obviously, this doesn't sound like something that's going to take an hour. So, we'll get back to you about a date.

MR. PIRAINO: Understood, Your Honor.

THE COURT: And, hopefully, we'll get back to you this afternoon.

MR. PIRAINO: Okay. Understood.

And we'll, obviously, be in touch with Ms. Heilman

and Mr. Fox and we'll respond promptly.

And then, I guess, with respect to the order that would need to be entered today, the 365(d)(4) order, with thanks to Ms. Roglen and some of my colleagues back at the office, I think we have incorporated sort of the comments to push both, Ms. Roglen, or, I guess, accelerate the deadline for Ms. Roglen and the edge order. Folks will send that around to Ms. Roglen and to Fox Rothschild and then have that submitted, hopefully, very shortly, so that it can be entered today if that's okay, Your Honor?

THE COURT: Yep.

MR. PIRAINO: Okay. So, from the debtors' perspective -- from our perspective, nothing further, but I believe Burlington might have one more thing.

MS. PEGUERO: Good afternoon, Your Honor.

Kristhy Peguero, Jackson Walker, on behalf of Burlington Stores, and my 9010 application is on file, and it may have been granted in the time that we've sat here at the hearing.

I just wanted to request that if Your Honor sends communication to the debtors and to GB and to the landlord, with respect to the hearing date, that Burlington be included, to the extent that --

THE COURT: Okay. We don't maintain emails.

If there's certain parties that -- and it's not

our habit to communicate with counsel. Our habit is to, or practice is to let debtor, the United States Trustee, and whoever the opponent is, and they should share the date with you.

MS. PEGUERO: Wonderful, okay.

THE COURT: But it will not go beyond scheduling a date.

MS. PEGUERO: Okay. Wonderful. Thank you.

THE COURT: If there's an issue with that, then the parties need to let us know, okay.

MS. PEGUERO: Thank you, Your Honor.

MR. PIRAINO: And just to confirm, Your Honor, once we get, you know, emails on the scheduling, we'll, of course, include the Burlington folks, as they're a relevant party here.

THE COURT: Right. Understood. Okay.

MR. PIRAINO: So, I think with that, we have nothing further for today. So, we very much thank Your Honor for your time.

THE COURT: Okay. Thank you.

Everybody have a good afternoon and I'll see you shortly. We stand adjourned.

MR. PIRAINO: Thank you, Your Honor.

COUNSEL: Thank you, Your Honor.

(Proceedings concluded at 3:47 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling January 23, 2025

William J. Garling, CET-543

Certified Court Transcriptionist

For Reliable

/s/ Tracey J. Williams January 23, 2025

Tracey J. Williams, CET-914

Certified Court Transcriptionist

For Reliable